

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THERASENSE, INC., and ABBOTT
LABORATORIES,

CASE NO. C04-2123 MJJ
CASE NO. C04-3327 MJJ
CASE NO. C04-3732 MJJ

Plaintiffs,

vs.

BECTON, DICKINSON AND CO.,

Defendant.

**AMENDED JOINT PROPOSED CASE
MANAGEMENT STATEMENT AND
~~PROPOSED~~ ORDER RELATING TO
REMAINING CLAIM CONSTRUCTION
PROCEEDINGS FOR '551 AND '745
PATENTS IN SUIT AND CASE SCHEDULE
UP TO STATUS CONFERENCE**

AND RELATED CASES

**AMENDED JOINT PROPOSED CASE MANAGEMENT STATEMENT AND
~~PROPOSED~~ ORDER RELATING TO REMAINING CLAIM CONSTRUCTION
PROCEEDINGS FOR '551 AND '745 PATENTS IN SUIT AND
CASE SCHEDULE UP TO STATUS CONFERENCE**

Pursuant to the Court's Order setting a Case Management Conference for August 31, 2006, Plaintiffs Abbott Diabetes Care Inc., formerly known as TheraSense, Inc., and Abbott Laboratories, and Defendants Becton, Dickinson & Company and Nova Biomedical Corporation submit this Case Management Statement and Proposed Order relating to the remainder of the claim construction proceedings to be completed on the two patents that will be the subject of the next Markman hearing and the case scheduled up to the status conference.

Description of the Cases

These cases involve U.S. Patent Nos. 6,143,164, 5,820,551, 6,592,745, and 5,628,890 (the "Abbott patents"). The products at issue are blood-glucose test strips used for diabetes care, marketed by Becton, Dickinson and Co. ("BD") and manufactured by Nova Biomedical Corporation ("Nova"). Abbott Diabetes Care Inc., formerly known as TheraSense,

Inc., ("ADC") and Abbott Laboratories ("Abbott Labs") (collectively "Abbott") allege that both BD and Nova willfully infringe the Abbott patents, entitling Abbott to damages and injunctive relief. The Defendants allege that they do not infringe the Abbott patents and that the Abbott patents are invalid, thereby entitling Defendants to declaratory judgments of non-infringement and patent invalidity.

The Court conducted a claim construction hearing on the claims of the '164 Patent and the '890 Patent on July 19, 2006, for the Cases listed above (the "BD/Nova Cases"). The '551 Patent and the '745 Patent are also the subject of a patent infringement suit currently pending before this Court in Case No. C05-03117 MJJ (the "Roche/Bayer Case"). The '551 Patent and the '745 Patent for both the BD/Nova Cases and the Roche/Bayer Case will be construed at a single claim construction hearing, which will be held on January 18, 2007, at 9:00 a.m. This Case Management Statement relates only to the remaining claim construction proceedings for the '551 Patent and the '745 Patent in the BD/Nova Cases (as the parties to the BD/Nova Cases have previously exchanged most of the claim construction submissions for these patents) and the case schedule up to the status conference.

**Proposed Schedule for Remainder of Claim Construction Proceedings for
the '551 and the '745 Patents In Suit and Case Schedule up to Status Conference**
(asterisks indicate dates under Northern District Patent Local Rules)

Date	Event
December 1, 2006	Deadline for parties to file opening briefs on claim construction
December 20, 2006	Deadline for parties to file responsive briefs on claim construction
January 17, 2007, at 10:00 a.m.	Claim construction pre-hearing conference and tutorial (combined - BD/Nova and Roche/Bayer)
January 18, 2007, at 9:00 a.m.	Claim construction hearing (combined -

1		BD/Nova and Roche/Bayer)
2	February 20, 2007, at 2:00 p.m.	Status Conference

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5 DATED September 6, 2006

BAKER BOTTS, LLP

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7 By: 
8 JAMES W. CANNON, JR. (pro hac vice)

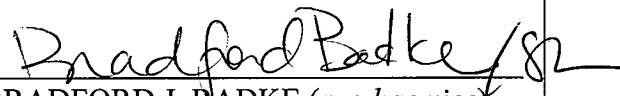
9 MUNGER, TOLLES & OLSON LLP

10 ROHIT K. SINGLA
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12 Attorneys for Plaintiffs
13 ABBOTT DIABETES CARE INC. and
14 ABBOTT LABORATORIES

15 DATED September 6, 2006

ROPES & GRAY LLP

16
17 By: 
18 BRADFORD J. BADKE (pro hac vice)


19 MARK D. ROWLAND
20 SONA DE

21 Attorneys for Defendants
22 BECTON, DICKINSON AND COMPANY
23 and NOVA BIOMEDICAL CORPORATION
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CASE MANAGEMENT ORDER

The Case Management Statement and Proposed Order Relating Solely to Remaining Claim Construction Proceedings for '551 and '745 Patents in Suit is hereby adopted by the Court and the parties are ordered to comply with this Order.

Dated: 9/12/2006

By: 
Honorable Martin J. Jenkins
UNITED STATES DISTRICT JUDGE